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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *
7 PAMELA COLEMAN, individually, and)
8 on behalf of all others similarly situated,) 2:04-CV-00747-PMP (GWF)
9 Plaintiffs,)
10 v.)
11 CIRCUS CIRCUS CASINOS, INC., et al.,)
12 Defendants.)
13 _____)

O R D E R

13 Presently before the Court is Defendants' Motion for Summary Judgment With
14 Respect to Defendants Gold Strike and Nevada Landing (Doc. #101), filed on June 26,
15 2006. Plaintiffs filed Plaintiffs' Opposition to Defendants' Motion for Summary Judgment
16 With Respect to Defendants Gold Strike and Nevada Landing (Doc. #108) on July 12, 2006.
17 Defendants filed a Reply (Doc. #123) on August 2, 2006.

18 Also before the Court is Defendants' Motion for Summary Judgment Seeking
19 Dismissal of Plaintiffs Whose Claims Are Time Barred (Doc. #105), filed on June 30, 2006.
20 Plaintiffs filed Plaintiffs' Opposition to Defendants' Motion for Summary Judgment
21 Seeking Dismissal of Plaintiffs Whose Claims Are Time Barred (Doc. #109) on July 14,
22 2006. Defendants filed a Reply (Doc. #122) on August 2, 2006.¹

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25 ¹Also before the Court is Plaintiffs' unopposed Request that Defendants' Exhibits 2 and 3 Be
26 Sealed Pursuant to the Policy of the Judicial Conference of the United States and E-Government Act
of 2002 (Doc. #111), filed on July 14, 2006. The Court will grant the request and order the Clerk of
the Court to file those exhibits under seal. The Court further advises the parties that in the future,
documents containing personal information such as social security numbers should be filed under seal.

1 **I. BACKGROUND**

2 Plaintiffs are current or former security guards for Defendants who allege
3 Defendants required them to arrive fifteen minutes early for their shift for security briefings
4 and to stay after their shift until they were relieved and Defendants did not compensate
5 them for this time. Plaintiffs pursue this matter as a collective action under the Fair Labor
6 Standards Act (“FLSA”).

7 Defendants Jean Development Company d/b/a Gold Strike Hotel and Gambling
8 Hall (“Gold Strike) and Jean Development West d/b/a Nevada Landing Hotel and Casino
9 (“Nevada Landing”) move for summary judgment, arguing no genuine issue of material fact
10 remains that these two entities did not hold pre-shift security briefings during the relevant
11 time period. Defendants provide the affidavits of current and former security supervisors
12 and security officers averring neither Nevada Landing nor Gold Strike held pre-shift
13 security briefings. Plaintiffs respond that the two Plaintiffs who worked at Nevada
14 Landing, Theresa Amon (“Amon”) and Dennis Jefferson (“Jefferson”) testified at their
15 depositions that they attended pre-shift briefings at Nevada Landing. Plaintiffs therefore
16 argue a genuine issue of fact remains for trial. Defendants respond that Plaintiffs offer no
17 evidence regarding Defendant Gold Strike and therefore Gold Strike is entitled to judgment
18 as a matter of law. Further, Defendants argue Plaintiffs Amon and Jefferson’s “self-
19 serving” testimony is insufficient to establish a genuine issue of material fact precluding
20 summary judgment.

21 Defendants also move for summary judgment with respect to numerous Plaintiffs
22 for whom Defendants argue the statute of limitations has run. Defendants contend each of
23 these Plaintiffs failed to file their consent to join the suit within two years of their last date
24 of employment. Defendants thus argue as a matter of law these Plaintiffs could not have
25 attended a pre-shift briefing within the applicable two-year limitations period under the
26 FLSA, and summary judgment therefore is appropriate. Plaintiffs respond that Defendants’

1 violation of the FLSA is willful, and therefore a three-year statute of limitations applies
2 under the FLSA. Plaintiffs contend Defendants have been on notice of their violations and
3 have taken a position inconsistent with controlling authority from the United States Court of
4 Appeals for the Ninth Circuit to justify their failure to compensate the security guards for
5 the pre-shift briefings. Defendants respond that this is the first time Plaintiffs have argued
6 Defendants acted willfully. Defendants argue Plaintiffs did not plead willfulness in the
7 Complaint and have not argued willfulness in response to Defendants' prior motions
8 regarding the statute of limitations. Defendants thus contend Plaintiffs have abandoned any
9 claim of willfulness and the two-year limitations period applies. Further, Defendants argue
10 that even if the three-year limitations period applies, several of the Plaintiffs' claims still are
11 barred.

12 **II. LEGAL STANDARD**

13 Summary judgment is appropriate if "the pleadings, depositions, answers to
14 interrogatories, and admissions on file, together with the affidavits, if any" demonstrate
15 "there is no genuine issue as to any material fact and . . . the moving party is entitled to a
16 judgment as a matter of law." Fed. R. Civ. P. 56(c). The substantive law defines which
17 facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). All
18 justifiable inferences must be viewed in the light most favorable to the non-moving party.
19 County of Tuolumne v. Sonora Cnty. Hosp., 236 F.3d 1148, 1154 (9th Cir. 2001).

20 The party moving for summary judgment bears the initial burden of showing the
21 absence of a genuine issue of material fact. Fairbank v. Wunderman Cato Johnson, 212
22 F.3d 528, 531 (9th Cir. 2000). The burden then shifts to the non-moving party to go beyond
23 the pleadings and set forth specific facts demonstrating there is a genuine issue for trial.
24 Id.; Far Out Prods., Inc. v. Oskar, 247 F.3d 986, 997 (9th Cir. 2001).

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1 **III. MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO DEFENDANTS**
2 **GOLD STRIKE AND NEVADA LANDING**

3 Defendants offer the testimony of George Repp, director of security for the Gold
4 Strike and Nevada Landing; Patrick Differ, director of security and surveillance at the Gold
5 Strike and Nevada Landing from 2003 to the present; Lisa Rutherford, director of security
6 and surveillance for the Gold Strike and Nevada Landing from 2000 to 2003; Clifford
7 Sharp, lead security officer at Nevada Landing; Guy Waugh, lead security officer for the
8 day shift at Gold Strike; Edward Kubasak, lead security officer for the day shift at Nevada
9 Landing; and Larry Roberts, security officer at Nevada Landing, who all testified under
10 oath either by affidavit or deposition testimony that neither the Nevada Landing nor the
11 Gold Strike held mandatory, uncompensated pre-shift briefings for security officers.
12 (Defs.' Mot. for Summ. J. With Respect to Defs. Gold Strike & Nevada Landing [Doc.
13 #101], Exs. 2-5; Defs.' Mot. for Summ. J. [Doc. #24], Exs. 1, 3, 4.) In response, Plaintiffs
14 offer the testimony of Plaintiffs Amon and Jefferson. Amon testified at her deposition that
15 she would attend ten to fifteen minute meetings before her shift during which the lead
16 security officer would advise the on-coming shift employees about problems of which they
17 needed to be aware as well as discuss corrective actions for prior problems. (Pls.' Opp'n to
18 Defs.' Mot. for Summ. J. With Respect to Defs. Gold Strike & Nevada Landing [Doc.
19 #108], Ex. 1.) Amon specifically stated that affidavits from others indicating there were no
20 pre-shift security meetings were incorrect. (Id.)

21 Likewise, Jefferson stated in his deposition testimony that he and other security
22 officers arrived approximately fifteen minutes before their shift to receive information for
23 the upcoming shift. (Id., Ex. 2.) Jefferson testified he had conducted some of these
24 meetings himself and they typically would last ten to fifteen minutes as the lead security
25 officer discussed such matters as whether certain patrons had been cut off from the bar or
26 other security risks. (Id.) Additionally, Jefferson testified several employees were fired for

1 not attending the briefings, although he did not state the names of any of those individuals.

2 (Id.)

3 A genuine issue of material fact remains as to whether Plaintiffs attended
4 mandatory uncompensated pre-shift briefings while employed by Defendant Nevada
5 Landing. Defendants offer the testimony of several supervisors and other employees that
6 no such meetings took place. Plaintiffs offer their own testimony that such meetings did
7 take place. The Court cannot determine credibility on a motion for summary judgment, as
8 that is the exclusive province of the jury. Clicks Billiards, Inc. v. Sixshooters, Inc., 251
9 F.3d 1252, 1266 (9th Cir. 2001) (“A jury, of course, may reject such evidence or determine
10 that the witnesses are not credible, but a court on summary judgment may not make such
11 determinations; instead it must draw all reasonable inferences in favor of the non-moving
12 party[.]”). “[M]ere numerical superiority of witnesses advancing a particular version of the
13 facts does not compel [the fact finder] to accept that version.” Nat'l Labor Relations Bd. v.
14 J.P. Stevens & Co., Inc., 563 F.2d 8, 18 (2d Cir. 1977) (quotation omitted).

15 The cases Defendants cite are not to the contrary. In Barnes v. Arden Mayfair,
16 Inc., the United States Court of Appeals for the Ninth Circuit affirmed the district court's
17 grant of summary judgment in a conspiracy and antitrust action. 759 F.2d 676 (9th Cir.
18 1985). The plaintiff alleged a shipper conspired with the plaintiff's competition to raise
19 tariff rates on plaintiff's product. Id. at 678-79. The only evidence the plaintiff offered to
20 prove the alleged conspiracy was the fact that the shipper had raised tariff rates on the
21 plaintiff's products and that the shipper had a meeting with the plaintiff's competitors. Id.
22 at 682-84. The Ninth Circuit held the fact that the shipper raised the plaintiff's tariff rate
23 did not raise a genuine issue of material fact that the shipper and competitors conspired
24 because the shipper applied the literal requirements of the applicable Interstate Commerce
25 Commission tariff and may have violated its tariff schedules if it did not charge the plaintiff
26 the higher rate. (Id. at 682-83.) Further, the Court held that because the plaintiff had no

1 evidence as to the substance of the single meeting between the shipper and the competitors,
2 the plaintiff presented no evidence creating a genuine issue of material fact to rebut the
3 testimony of the shipper and plaintiff's competitors that although the competitors were
4 involved in a conspiracy against the plaintiff, the shipper was not a part of that conspiracy.
5 Id. at 684.

6 Here, Plaintiffs Amon and Jefferson testified they personally attended pre-shift
7 briefings at Nevada Landing. Amon and Jefferson would have direct knowledge of their
8 own participation in such a meeting. This is not a situation where the Court would have to
9 draw unreasonable inferences to support Plaintiffs' position. Plaintiffs contend there were
10 pre-shift meetings. Defendants' witnesses assert there were not. Which witnesses'
11 testimony to credit is a question for the jury.

12 Further, in Kennedy v. Applause, Inc., the plaintiff sued her employer for
13 allegedly terminating her in violation of the Americans with Disabilities Act. 90 F.3d 1477
14 (9th Cir. 1996). The plaintiff filled out under oath state disability claim forms averring she
15 was completely disabled. Id. at 1480. However, the plaintiff subsequently testified in
16 deposition testimony that she was able to work. Id. The Ninth Circuit concluded no
17 genuine issue of fact remained that the plaintiff was totally disabled based on her doctor's
18 finding of total disability, the medical evidence, and her own sworn statements on the
19 disability forms. Id. at 1481. The Court found her contrary deposition testimony was
20 uncorroborated, self-serving, and directly contradicted her own prior sworn statements, and
21 thus did not raise a genuine issue of material fact. Id.

22 Here, neither Amon nor Jefferson previously have stated under oath that they did
23 not attend pre-shift briefings. Their testimony corroborates each other's statements that the
24 Nevada Landing held pre-shift briefings. Their statements are not the kind of self-serving,
25 after-the-fact attempts to raise a genuine issue of material fact in the face of contrary
26 testimony given under oath which the Kennedy Court found would not preclude summary

1 judgment. Accordingly, the Court will deny Defendants' motion to dismiss as to Defendant
 2 Nevada Landing.

3 However, Plaintiffs have presented no evidence they attended pre-shift briefings
 4 at the Gold Strike within the stipulated relevant period.² The deposition testimony Plaintiffs
 5 offer in response to the motion for summary judgment refers only to Nevada Landing.
 6 Further, Amon testified she left the Gold Strike for the Nevada Landing in August 2002.
 7 (Defs.' Reply in Support of Mot. for Summ. J. With Respect to Defs. Gold Strike & Nevada
 8 Landing [Doc. #123], Ex. 6.) Jefferson's Personnel Action Form indicates he transferred to
 9 the Nevada Landing in July 2001. (Id., Ex. 8.) Because Plaintiffs have presented no
 10 evidence that either of them attended a pre-shift briefing at Defendant Gold Strike after the
 11 stipulated date of September 9, 2002, Defendant Gold Strike is entitled to summary
 12 judgment.

13 **IV. MOTION FOR SUMMARY JUDGMENT FOR TIME-BARRED CLAIMS**

14 Defendants move to dismiss the claims of several Plaintiffs³ who failed to file
 15 their notice of consent to join the suit within two years of their last date of employment with
 16 Defendants. Defendants argue that because the FLSA has a two-year statute of limitations,
 17 no genuine issue of material fact remains that the limitations period has run for any Plaintiff
 18 who did not file a consent within two years of their last date of employment. Plaintiffs
 19 respond that Defendants have engaged in willful FLSA violations, and thus a three-year

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21 ² See Stip. & Order to Approve Notice of Conditionally Certified Collective Action [Doc. #59],
 22 Notice of Conditionally Certified Collective Action Claim Under the Fair Labor Standards Act at 2.)

23 ³ The Plaintiffs at issue in this motion are: Linda Darlene Martin, Ronald Elmore, Bruce E.
 24 Glass, Doyle W. Stransner, John R. Tyler, Ian P. Amsler, Robert Pacleb, Ronald D. Gale, Christopher
 25 M. Haberman, Richard D. Harris, Lomont D. Hudson, Mary K. Johnson, Tracy Jokela, Waylon Heath
 26 Layton, Carlos J. Navarro, Jr., Matthew K. Shores, Stanley G. Welch, Ronald Bollig, Jose Cobos, Mark
 Bonstein, James E. Leach, Timothy Nelson McDonald, Marc McElrath, Westley C. Moore, Jack C.
 Nicholls, Barry Macray Shumate, Molly L. Sprague, Kenneth R. Sumpter, Walter Robert Taylor, Carl
 Eugene Burton, Jason Wayne Holland, Pete C. Sveen, and Theresa Amon.

1 limitations period applies. Defendants respond that Plaintiffs have not pled willfulness and
 2 have never alleged willfulness in response to any of Defendants' prior motions regarding
 3 the applicable statute of limitations. Further, Defendants contend that even if Plaintiffs
 4 adequately have alleged willfulness, some Plaintiffs' claims still are barred.⁴

5 Plaintiffs alleging an FLSA violation must bring their cause of action within two
 6 years of accrual or it is "forever barred." 29 U.S.C. § 255(a). The FLSA extends the
 7 limitations period to three years for claims "arising out of a willful violation."⁵ Id. Where,
 8 as here, the plaintiffs have filed a collective action under 29 U.S.C. § 216(b), the action
 9 does not commence with respect to each individual plaintiff until he or she has filed with
 10 the court a consent to join the suit. See 29 U.S.C. § 256; Bonilla v. Las Vegas Cigar Co.,
 11 61 F. Supp. 2d 1129, 1132-33 (D. Nev. 1999). Where the complaint does not allege or the
 12 plaintiff does not contend the defendant engaged in a willful violation, the two-year
 13 limitation period applies. See id. at 1141 (declining to apply three-year limitation period
 14 where the plaintiffs neither alleged the defendant acted willfully nor argued that the
 15 three-year statute of limitations applied); Perella v. Colonial Transit, Inc., 148 F.R.D. 147,
 16 149 n.2 (W.D. Pa. 1991) (declining to apply three-year limitations period where the plaintiff
 17 did not allege the defendants acted willfully and did not argue the three-year limitations
 18 period applied even though the parties had discussed the statute of limitations issue at
 19 conferences and the defendant moved to dismiss on this very basis).

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22 ⁴ Defendants contend a three-year limitations period bars the following Plaintiffs' claims:
 23 Christopher M. Haberman, Richard D. Harris, Waylon Heath Layton, Mark Bonstein, and Barry
 24 Macray Shumate.

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27 ⁵ "A violation of the FLSA is willful if the employer 'knew or showed reckless disregard for
 28 the matter of whether its conduct was prohibited by the [FLSA].'" Chao v. A-One Med. Servs., Inc.,
 29 346 F.3d 908, 918 (9th Cir. 2003) (quoting McLaughlin v. Richland Shoe Co., 486 U.S. 128, 133
 30 (1988)).

1 The Complaint alleges both named and unnamed Defendants “negligently,
2 willfully, intentionally, maliciously, recklessly . . . caused, directed, allowed or set in
3 motion the unlawful and injurious events affecting Plaintiffs and all others similarly
4 situated.” (Notice of Removal of Action Under 28 U.S.C. § 1441(b) [Doc. #1], Compl. at
5 ¶ 23.) The Complaint contains no other allegations of willfulness or recklessness, and
6 alleges no factual basis for willfulness.

7 Defendants previously moved to dismiss claims against Defendants Gold Strike,
8 Nevada Landing, and Railroad Pass based on the running of the statute of limitations.
9 (Defs.’ Mot. for Summ. J. [Doc. #24], at 7.) Defendants argued none of these entities had
10 held pre-shift security briefings within the past three years and thus the two-year limitations
11 period had run. Defendants also argued Plaintiffs had not pled a willful violation to extend
12 the limitations period, but even if they had, the three-year period also had run. In response
13 to this motion, Plaintiffs requested more time to conduct discovery to enable Plaintiffs to
14 respond to the motion. (Pls.’ Opp’n to Sections II(B) and II(C) of Defs.’ Mot. for Summ. J.
15 & FRCP 56(f) Mot. in Opp’n to Section II(D) of Defs. Mot. for Summ. J. [Doc. #25] at 5-
16 6.) Plaintiffs did not respond substantively to Defendants’ arguments regarding the relevant
17 statute of limitations.

18 Defendants subsequently argued, in opposition to Plaintiffs’ motion to certify a
19 collective action, that the two-year statute of limitations barred named Plaintiff and
20 proposed representative Jerald Henry’s (“Henry”) claims. (Opp’n to Pls.’ Mot. to
21 Conditionally Certify Collective Action for Purposes of Discovery & Notice & Request to
22 Send Notice to Putative Collective Action Members & Request to Dismiss Pls.’ FLSA
23 Claims Against All Defs. Except Mandalay Bay [Doc. #33] at 6.) Defendants further
24 argued Plaintiffs had not alleged a willful violation so the three-year limitations period did
25 not apply. Plaintiffs did not dispute Defendants’ argument that they had not pled a willful
26 violation and thus only the two-year limitations period applies, but instead argued

1 Defendants were arguing the merits on a motion to conditionally certify a collective action
2 and Plaintiffs had established commonality and typicality sufficient to support a collective
3 action. (Pls.' Reply to Defs.' Opp'n to Pls.' Mot. to Conditionally Certify Collective Action
4 for Purposes of Discovery & Notice & Request to Send Notice to Putative Collective
5 Action Members & Pls.' Opp'n to Defs.' Request to Dismiss Pls.' FLSA Claims Against
6 All Defs. Except Mandalay Bay [Doc. #39].) This Court ruled that the two-year limitations
7 period barred Henry's claims because he had not filed a consent to suit within two years
8 from his last date of employment with Defendants. (Order [Doc. #47] dated July 8, 2005.)

9 Plaintiffs moved the Court to reconsider its dismissal of Plaintiff Henry. (Pls.'
10 Mot for Recons. of the Dismissal of Pl. Jerald Henry [Doc. #56].) Plaintiffs argued that
11 because Henry was a named Plaintiff, he did not need to file a consent to suit.
12 Alternatively, Plaintiffs argued they had notified the Court of Henry's consent to suit by
13 requesting his consent be filed under seal. Plaintiffs did not argue, however, that
14 Defendants had engaged in willful violations triggering the three-year limitations period.
15 The Court denied the motion for reconsideration. (Order [Doc. #62] dated October 18,
16 2005.)

17 Plaintiffs argue willfulness for the first time in opposition to this motion to
18 dismiss even though Defendants previously have argued on several occasions that the two-
19 year limitations period applies. The Court dismissed Plaintiff Henry's claims based on the
20 two-year limitations period, yet Plaintiffs made no argument in opposition or on
21 reconsideration that Defendants' violations were willful and thus subject to the three-year
22 limitations period. Thus, even if Plaintiffs' boilerplate allegation in the Complaint that
23 Defendants acted "willfully" is sufficient to invoke the three-year limitations period,
24 Plaintiffs abandoned that position throughout the various motions regarding the applicable
25 statute of limitations in this case.

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1 Even if Plaintiffs could alter course and now argue willfulness at this point in the
2 proceedings, a cause of action for willful violations would accrue, at the earliest, in June
3 2004. Plaintiffs argue that in June 2004, the Ninth Circuit decided Ballaris v. Wacker
4 Siltronic Corporation, which Plaintiffs contend put Defendants on notice that their practice
5 of requiring employees to attend uncompensated pre-shift briefings violates the FLSA and
6 Defendants cannot offset that unpaid time with a paid lunch period. 370 F.3d 901 (9th Cir.
7 2004). Plaintiffs argue that Defendants' continued conduct beyond the issuance of the
8 Ballaris decision demonstrates willfulness.

9 At most, however, Plaintiffs' argument demonstrates willfulness only as of June
10 2004 because that is when Defendants purportedly were on notice via Ballaris that their
11 conduct violated the FLSA. Thus, only violations occurring from that point forward would
12 arise out of a willful violation. That Defendants allegedly acted willfully as of June 2004
13 does not retroactively impute the three-year limitations period to conduct before June 2004.
14 Accordingly, any employee whose employment ended before that date was not subject to
15 Defendants' allegedly willful conduct, their claims do not arise out of a willful violation,
16 and thus the two-year statute of limitations controls.

17 Plaintiffs do not challenge the accuracy or authenticity of Defendants' exhibits
18 establishing Plaintiffs' last dates of employment as security officers with Defendants. None
19 of Plaintiffs at issue in this motion worked as security officers for Defendants as of June
20 2004 and beyond. (Defs.' Mot. for Summ. J. Seeking Dismissal of Pls. Whose Claims Are
21 Time Barred [Doc. #105], Exs. 2-3.) Accordingly, these Plaintiffs are subject to a two-year
22 limitations period, even if the Court were to permit Plaintiffs to alter course and now argue
23 a three-year limitations period applies. Further, Plaintiffs do not dispute that all of these
24 Plaintiffs failed to file a consent to suit within two years of their last date of employment.
25 Accordingly, the FLSA's two-year statute of limitations bars the claims of the Plaintiffs at
26 issue in this motion. The Court therefore will grant Defendants' motion to dismiss with

1 respect to the identified Plaintiffs.

2 **V. CONCLUSION**

3 IT IS THEREFORE ORDERED that Defendants' Motion for Summary
 4 Judgment With Respect to Defendants Gold Strike and Nevada Landing (Doc. #101) is
 5 hereby GRANTED in part and DENIED in part. The motion is granted as to Defendant
 6 Jean Development Company d/b/a Gold Strike Hotel and Gambling Hall. Judgment is
 7 hereby entered in favor of Defendant Jean Development Company d/b/a Gold Strike Hotel
 8 and Gambling Hall and against Plaintiffs. The motion is denied as to Defendant Jean
 9 Development West d/b/a Nevada Landing Hotel and Casino.

10 IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment
 11 Seeking Dismissal of Plaintiffs Whose Claims Are Time Barred (Doc. #105) is hereby
 12 GRANTED. The following Plaintiffs' claims are hereby DISMISSED with prejudice:

13	Linda Darlene Martin	Ronald Elmore	Bruce E. Glass
14	Doyle W. Stransner	John R. Tyler	Ian P. Amsler
15	Robert Pacleb	Ronald D. Gale	Christopher M. Haberman
16	Richard D. Harris	Lomont D. Hudson	Mary K. Johnson
17	Tracy Jokela	Waylon Heath Layton	Carlos J. Navarro, Jr.
18	Matthew K. Shores	Stanley G. Welch	Ronald Bollig
19	Jose Cobos	Mark Bonstein	James E. Leach
20	Theresa Amon	Marc McElrath	Timothy Nelson McDonald
21	Westley C. Moore	Jack C. Nicholls	Barry Macray Shumate
22	Molly L. Sprague	Kenneth R. Sumpter	Walter Robert Taylor
23	Carl Eugene Burton	Jason Wayne Holland	Pete C. Sveen

24 Judgment is hereby entered in favor of Defendants and against the above-identified
 25 Plaintiffs.

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1 IT IS FURTHER ORDERED that Plaintiffs' Request that Defendants' Exhibits 2
2 and 3 Be Sealed Pursuant to the Policy of the Judicial Conference of the United States and E-
3 Government Act of 2002 (Doc. #111) is hereby GRANTED. The Court directs the Clerk of the
4 Court to file under seal Exhibits 2 and 3 to Defendants' Motion for Summary Judgment Seeking
5 Dismissal of Plaintiffs Whose Claims Are Time-Barred [Doc. #105].

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8 DATED: September 6, 2006



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10 PHILIP M. PRO
11 Chief United States District Judge
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